IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10796 of 2002

For Approval and Signature:

HONOURABLE **MR.JUSTICE ANIL R. DAVE**
&
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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AMBALAL SARABHAI ENTERPRISES LTD. - Petitioner(s)

Versus

SALES TAX OFFICER-1 CLASS 1, CITY CIRCLE 8 & 3 Ors-Respondent(s)

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Appearance :
MR KH KAJI with MR MANISH K KAJI for Petitioner
MR VM PANCHOLI AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS. JUSTICE R.M.DOSHIT
Date : 13/01/2006

ORAL JUDGMENT **(Per : HON'BLE Ms. JUSTICE R.M DOSHIT)**

The petitioner [hereinafter referred to as, "***the Company***"] is a Company incorporated under the Companies Act, 1956. The Company is engaged, *inter alia*, in the business of manufacturing and marketing of various life

saving drugs, pharmaceutical preparations, etc. The Company has its manufactory in the State of Gujarat at Vadodara. The Company is a dealer within the meaning of the Gujarat Sales Tax Act, 1969 [hereinafter referred to as, "***the Act***"]. The subject matter of challenge in this petition is the action of the respondents authorities in issuing notices dated 12th April, 2001; 1st February, 2002 and 21st September, 2002 calling upon the Company to show cause why the incidence of sale in question should not be subjected to sales tax under the Act.

The facts leading to the present petition are not disputed. On 19th October, 1999, the Company sold/assigned certain corporeal rights to one Sarabhai Piramal Pharmaceuticals Limited for a sum of Rs. 34 crores. The necessary documents were executed at Mumbai. It is this transfer of corporeal rights viz., promotion literature, copy right, technology, etc which is the subject matter of controversy. According to the respondents authorities, irrespective of the transfer being made at Mumbai in the State of Maharashtra, as the goods in question, the corporeal rights transferred on 19th October, 1999, are located at Vadodara in the State of Gujarat, the Company is liable to pay tax to the State of Gujarat leviable under the Act. According to the Company, as the transfer

in question has taken place at Mumbai in the State of Maharashtra, the property in the goods has passed in the State of Maharashtra, the said transfer is, therefore, not taxable in the State of Gujarat.

Mr. Kaji has relied upon Section 87 of the Act and Article 286 of the Constitution. He has submitted that the State of Gujarat has no authority to levy tax on the sale of goods which has taken place out of the State of Gujarat. In the present case, admittedly, the transfer in question i.e assignment of trade mark and the transfer of technology under the deed of assignment dated 19th October, 1999 and the deed of agreement dated 19th October, 1999 are not exigible to tax under the Act. The action of the respondents in issuing *impugned* show cause notices and in raising demand for payment of tax under the Act with respect to the above transactions of transfer or assignment of trade mark and transfer of corporeal rights is uncalled for, illegal and invalid. In support of his contention Mr. Kaji has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of ***20th Century Finance Corporation Limited & Anr. vs. State of Maharashtra*** [119 STC 182].

Mr. Pancholi has contested the petition. He has

submitted that the aforesaid judgment in the matter of 20th Century Finance Corporation Limited shall not apply to the facts of the present case. The said judgment has been delivered by the *Hon'ble* Supreme Court with respect to the relevant provisions prevalent in the States of Maharashtra, Karnataka, Tamil Nadu, etc. Considering the definition of “Sale” under the Act and Section 3A thereof, the transfers in question cannot be said to be a deemed sale as was the case before the *Hon'ble* Supreme Court. In support of his submission, Mr. Pancholi has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of ***Tata Consultancy Services v. State of A.P*** [(2005) 1 SCC 308].

As recorded hereinabove,under the Deed of Assignment and of sale, the petitioner has transferred corporeal rights to use trade mark and right to copy right, technology, etc. The said transfer has admittedly taken place at Mumbai in the State of Maharashtra.

A similar case arose before the *Hon'ble* Supreme Court in the matter of 20th Century Finance Corporation Limited wherein two Judges in a Constitutional Bench, speaking through *Hon'ble* Mr. Justice Saiyed Shah Mohammed Quadri held that such a transfer would be exigible to tax

in the State where the goods are located. However, majority of the *Hon'ble* Judges on the Bench took a contrary view. It was held that, "***..We, therefore, find that location of delivery of goods within the State cannot be made a basis for levy of tax on sale of goods.***" The majority Judges speaking through *Hon'ble* Mr. Justice V.N Khare [*as he then was*] held thus -

> **35. As a result of the aforesaid discussion our conclusions are these :**
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> > **(a) The States in exercise of power under entry 54 of List II read with article 366 (29A)(d) are not competent to levy sales tax on the transfer of right to use goods, which is a deemed sale, if such sale takes place outside the State or is a sale in the course of inter-State trade or commerce or is a sale in the course of import or export.**
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> > **(b) The appropriate Legislature of creating legal fiction can fix *situs* of sale. In the absence of any such legal fiction the *situs* of sale in case of the transaction of transfer of right to use any goods would be the place where the property in goods passes, *i.e.*, where the written agreement transferring the right to use is executed.**
> >
> > **(c) Where the goods are available for the transfer of right to use the taxable event on the transfer of right to use any goods is on the transfer which results in right to use and the *situs* of sale would be the place where the contract is executed and not where the goods are located for use.**
> >
> > **(d) In case where goods are not in existence or where there is an oral or implied transfer of the right to use goods, such transactions may be effected by the delivery of the goods, such transactions may be effected by the delivery of**

the goods. In such cases the taxable event would be on the delivery of goods.

(e) The transaction of transfer of right to use goods cannot be termed as contract of bailment as it is deemed sale within the meaning of legal fiction engrafted in clause (29A)(d) of article 366 of the Constitution wherein the location or delivery of goods to put to use is immaterial.

Clause 30C was added in Section 2 of the Act by Gujarat Act No. 14 of 1985 w.e.f 5th August, 1985. The said Clause 30C defines "***specified sale***" to mean, "***the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, and unless, the context otherwise requires, the words "sell", "buy", and "purchase" with all their grammatical variations and cognate expressions shall be construed accordingly."*** Simultaneously, taxing section 3A was inserted by Gujarat Act No. 14 of 1985. Section 3A of the Act enjoins a dealer to pay sales tax on the turnover of the specified sales of goods specified in Schedule-III; if such turnover exceeds the limit specified in that section. The definition of the words, "***specified sale***" is in the terms of sub-clause (d) of Clause 29A of *Article* 366 of the Constitution inserted by the Constitution [*46th Amendment*] Act, 1982. Thus, certain sales not being sale

of goods within the meaning of Sale of Goods Act, which hitherto escaped sales tax, have been brought within the purview of the Act and have been made taxable. The incidence of transfer of such goods has now been made taxable under Section 3A of the Act. It should, however, be noted that Section 3A of the Act does not fix situs of such specified sale by creating legal fiction. In our opinion, therefore, as held by the *Hon'ble* Supreme Court in the above referred matter of 20th Century Finance Corporation Limited, the incidence of taxability arises at a place where the property in goods is actually passed. In the present case, it is not in dispute that deed of assignment and the deed of sale in question were executed at Mumbai in the State of Maharashtra. In other words, the property in the goods was transferred in the State of Maharashtra.

In view of the above discussion, the petition is allowed. The *impugned* notices dated 12th April, 2001; 1st February, 2002 and 21st September, 2002 are *quashed* and set aside. The amount of tax and interest recovered shall be refunded to the petitioner within six months from the date of the receipt of the *writ* of this Court. Rule is made absolute in the above terms with cost.

{Anil R. Dave, J.}

{Miss R.M Doshit, J.}

*Prakash**